

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA LLC d/b/a IXO;

Plaintiff,

v.

ACTIAN CORPORATION and PERVASIVE
SOFTWARE, INC.,

Defendants.

Case No. 6:15-cv-00463-RWS-JDL

**DECLARATION OF STEPHEN MCERLAIN IN SUPPORT OF PLAINTIFF
REALTIME DATA LLC'S OPPOSITION TO DEFENDANT ACTIAN
CORPORATION'S MOTION TO TRANSFER VENUE**

I, Stephen McErlain, declare and state as follows:

1. I have personal knowledge of all matters set forth in this declaration, and if called upon to do so, could and would testify truthfully to them.

2. I am the Vice President of Realtime Data LLC d/b/a IXO ("Realtime"). I reside in Astoria, New York.

3. Realtime has maintained an office located at 1828 E.S.E. Loop 323, Tyler, Texas 75701 since October 6, 2009.

4. Realtime did not open its Tyler office for the purpose of filing lawsuits in Tyler or anywhere else in this District. Instead, Realtime opened its Tyler office to assist with the licensing and trials relating to Realtime's intellectual property portfolio for its data-compression inventions. For example, Realtime opened its Tyler office 18 months after it filed the *Packeteer* action (Case No. 6:2008-cv-00144) in part to further its licensing efforts and to stage many of its physical prototypes and store documents relating to its anticipated trial in the *Packeteer* action.

5. Since 2009, all or substantially all of Realtime's documents were either physically located at Realtime's Tyler office or exist electronically and will be collected from Realtime's Tyler office. These include Realtime's patent file histories, licenses, and other documents relating to the patents-in-suit. Realtime's Tyler office also includes physical devices and prototypes developed by Realtime, which are available for inspection at the Tyler office. The devices include original X3 PCI accelerator cards, X3 Network Attached Storage Servers, X3 Web Servers, X3 Compaqtor, X3 Snap Servers, Realtime WAN Accelerators, Realtime T1 point-to-point bandwidth multipliers, and Realtime Market Data Accelerators, including data feed simulators, monitors and compression engines. The Tyler office also houses original source code and demonstration software. Realtime has since maintained these documents and devices in the Tyler office.

6. Moreover, since 2009, Realtime has conducted in its Tyler office numerous meetings and communications with and between various members of its Board of Directors. These meetings included at least two Board of Directors meetings and other communications.

7. Recently, in furtherance of its efforts to develop and license its intellectual property portfolio, Realtime opened its second office in Texas, located at 5851 Legacy Circle, 6th Floor, Plano Texas 75014. Realtime hired Deepika Sreenivasulu Pagala, an electrical engineer, who works out of the Plano office and assists in the development and licensing of Realtime's intellectual property portfolio relating to its data-compression inventions.

8. Realtime does not have any offices, employees or operations in California.

9. I understand that Defendant Actian Corporation ("Actian") has filed a motion to sever and transfer certain claims to the Northern District of California ("N.D. Cal.").

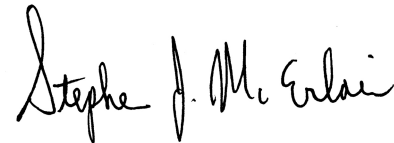
10. I understand that the Court will consider my convenience in connection with its decision on the pending motion to transfer. As such, I make this declaration to indicate that it would be far more convenient for me for the above-captioned action to proceed in Texas and not in N.D. Cal., as I will not be inconvenienced by travel to Texas to appear as a witness at trial.

11. If asked to testify in Tyler, Texas, I would be willing to do so.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 5, 2015 at New York, New York.

By:



Stephen McErlain